IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.8 OF 2005
IN
EXECUTION APPLICATION NO.150 OF 1994
IN
SUIT NO.808 OF 1985

Hotel Corpn. of India Ltd. ..Plaintiff.

V/s.

M/s.Shanti Vijay Builders & ors...Defendants.

Mr.B.Patel i/b. Munir Merchant for applicants/-defendants.

Mr.M.S.Dehlvi, i/b M/s.M.V.Kini & co. for plaintiff.

CORAM: A.M.KHANWILKAR,J

DATE : OCTOBER 5, 2005.

P.C. :

1. Heard counsel for the parties.

2. Having gone through the pleadings and documents on record, in my opinion, present chamber summons is misconceived. The defendants in terms of order dated November 8, 2001 passed by Justice Baam in chamber summons No.444/1994 are entitled to receive the sum of Rs.12,10,889.26 with interest as stipulated in the Consent Terms. Defendants were already paid sum of Rs.10,93,704/-, which position is supported by the record. In this backdrop, the Court directed that the defendants are entitled to balance

amount after giving credit for a sum of Rs.10,93,704/-. In other words, defendants were entitled to balance amount of Rs.1,17,185.26 (i.e. Rs.12,10,889.26 minus Rs.10,93,704/-).

3. From the affidavit as filed, it is seen that the defendants have already been paid sum of Rs.9,79,700/- after the order was passed by this Court, as referred to above. This amount of Rs.9,79,700/- includes the sum of Rs.1,17,185.26 being the outstanding amount plus interest accrued from time to time, as can be seen from the calculation as is given in paragraph 2 of the affidvit filed on behalf of the plaintiff. In other words, no further amount is due and payable to the defendants/applicants. In such situation, it is not possible to countenance the stand of the defendants, which is based on incorrect understanding and construction of the order passed by Justice Baam on Novembr 8, 2001. Correct position is reproduced in reply filed on behalf of the plaintiff, which I am inclined to accept, as it is substantiated from the record. Accordingly, this chamber summons is devoid of merits. The same is rejected.

4. In view of the conclusiion reached as above

said, the decree will have to be marked "satisfied".

5. In the circumstances, even execution application will have to be disposed of in terms of this order.

6. Ordered accordingly.